

Exhibit 1

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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x

CAN'T STOP PRODUCTIONS, INC.,

3 Plaintiff,

4 v.

17 Civ. 6513(CS)

5 SIXUVUS, LTD., et al.,

6 Defendants.

7 v.

8 KAREN WILLIS, doing business
as Harlem West Entertainment,

9 Intervenor.

10 -----x

11 United States Courthouse
White Plains, N.Y.

12 March 16, 2018

13 9:35 a.m.

14 Before:

15 THE HONORABLE CATHY SEIBEL,

16 District Judge

17 APPEARANCES

18 EISENBERG, TANCHUM & LEVY
Attorneys for Plaintiff

19 STEWART L. LEVY

20 ADELMAN, MATZ, P.C.
Attorneys for Defendants

21 GARY PHILIP ADELMAN
SARAH MATZ

22
23 KAREN WILLIS, Pro Se Intervenor

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1 (In open court)

2 THE DEPUTY CLERK: Can't Stop v. Sixuvus.

3 THE COURT: Good morning, Ms. Willis, Mr. Levy,
4 Ms. Matz, and Mr. Adelman.

5 Can you hear me okay?

6 MR. ADELMAN: Yes. Perfectly, your Honor. Good
7 morning.

8 MS. MATZ: Yes. Good morning, your Honor.

9 THE COURT: All right. I've got the application from
10 Ms. Willis for a TRO.

11 Can't Stop is not asking for anything at this stage,
12 Mr. Levy?

13 MR. LEVY: No. Generally, we are supportive of the
14 motion, but not -- it's not 100 percent in line with our
15 position, so we're just going to wait and see.

16 THE COURT: Well, it looked to me like some of the
17 relief that was sought really sort of belonged to your client,
18 but let me hear from defendants why I shouldn't enter a TRO.
19 It does look like, from the exhibits, that defendants are
20 continuing to use the trademark, which trademark is not theirs
21 to use.

22 Obviously, the order to show cause is the easy part.
23 You'll have to show cause why a PI shouldn't be entered, but
24 why shouldn't I -- actually, I take it back. There's really no
25 order to show cause requested; there's just a TRO requested.

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1 MS. WILLIS: There is an order to show cause, your
2 Honor, at the back. I put it in the -- it's noted in the
3 last -- look at the order, the last ones.

4 THE COURT: Oh, you're right, the last paragraph. The
5 last paragraph says they shall show cause why a PI should not
6 be granted.

7 But why shouldn't I grant a TRO in the meantime,
8 Ms. Matz and Mr. Adelman? It does look like your clients are
9 continuing to use the trademark based on the exhibits and the
10 other papers.

11 MS. MATZ: Good morning. Just for the record, we
12 appreciate you allowing us to appear telephonically.

13 The first issue here is that the TRO should not be
14 entered at all because my clients are no longer using the name
15 in a way that violates anyone's trademark rights. The exhibit
16 shows that my clients are changing their name to Kings of
17 Disco, Formerly Village People.

18 THE COURT: Let me interrupt you. We're having a hard
19 time understanding you.

20 You're on a land line, I take it. I don't know why it
21 is that you're coming out garbled, but maybe -- I don't know.
22 Maybe -- you're coming out really loud here.

23 MS. MATZ: I'm coming out really loud, is that what
24 you're saying?

25 THE COURT: Yes.

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1 MS. MATZ: Is this a little better?

2 THE COURT: Yes, it is.

3 MS. MATZ: Okay. Great. I'll just start over.

4 What I was saying is that the use that's complained
5 about is not a use that violates anyone's trademark rights. My
6 clients are in the process of changing their name to Kings of
7 Disco, Formerly Village People.

8 This was not a name that was addressed by any of the
9 prior proceedings or motion. And in fact, it is both not going
10 to be the -- Ms. Willis, and if she's allowed to proceed with
11 these claims, this is another issue that I'll address in a few
12 moments -- and the plaintiffs aren't going to be able to prove
13 that there's a likelihood of confusion using that name.

14 THE COURT: It sounds awfully confusing to me. I
15 mean, it sounds like -- it's one thing to say "I'm Felipe Rose,
16 formerly of the Village People." That I think is fair game.
17 But to say "We're Kings of Disco, formerly Village People,"
18 makes it sound like we're the Village People and we've just
19 changed our name, but we're going to be the same act.

20 And I'm having a hard time understanding how your
21 clients are entitled to do the same act. How are they entitled
22 to still be the Cop and the Cowboy, etc., for live
23 performances?

24 MS. MATZ: So, I hear what you're saying, but the
25 difference between what you're saying is when there is one

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1 person who was formerly performing as a band versus, in this
2 case, where the entire group previously performed as Village
3 People.

4 So, I don't think that there is a difference between
5 Kings of Disco, Formerly Village People and the example that
6 you just gave, which is Felipe Rose, Formerly Village People.
7 There's a lot of case law on the use of "formerly" and
8 "formerly of," and both cases in the Southern District and the
9 Ninth Circuit that uses those came out on the side of that
10 instances where "formerly of" and "formerly" were not --
11 were -- both did not satisfy the likelihood of confusion test
12 and, in some cases, were applied as nominative and fair use.

13 THE COURT: Are your clients doing the same show they
14 did when they were Village People, or essentially the same
15 show? Are they doing are they performing as the characters?

16 MS. MATZ: Right now, yes, but that is what cover
17 bands do. And there's nothing that can stop -- there's no
18 trademark or anything else that can stop them from going out
19 there and singing the songs. That's a copyright issue, and
20 it's covered by the license performance licenses.

21 THE COURT: I'm not talking about the copyright issue.
22 They can go out and sing the songs, but can they dress up in
23 the costumes and use the routines and the moves?

24 MS. MATZ: So, there's two separate questions there:
25 First is the costumes, and I believe that, yes, they can.

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1 There hasn't been any showing that there is a likelihood of
2 confusion. It would be the same thing as saying a Kiss cover
3 band can't go out there and paint their faces. Of course they
4 can.

5 THE COURT: But if that cover band is saying "We're
6 Sweetheart, Formerly Kiss," people are going to think that
7 they're seeing Kiss. And when they show up, they're going to
8 be like oh, yeah, there's Kiss in the costumes and the make-up,
9 but they're not Kiss.

10 MR. LEVY: Also, the famous Beatlemania case of 30
11 years ago, where the people performing as the Beatles, dress as
12 the Beatles were shut down because they weren't allowed to do
13 that.

14 And as far as nominative fair use, Ms. Matz is wrong.
15 The Ninth Circuit -- the seminal case is the New Kids on the
16 Block Case, it's the first case that had it. It recognized in
17 New York and in Boston in the case of the group Boston, "More
18 Than a Feeling," that group.

19 THE COURT: Yes.

20 MR. LEVY: And what those cases say is that, you can
21 make reference to what you did in the past if it defines what
22 you did in the past. So you can use the trademark for that,
23 but you can't use it for future uses. So that, in the case of
24 the Boston, the lead guitarist was Barry Goudreau, and he was
25 advertising himself as a member of another band featuring Barry

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1 Goudreau of Boston, okay? The court said, well, he's with
2 another band; it has nothing to do with the group Boston. He
3 was of Boston, we'll allow it, but they wouldn't let him
4 perform as "Barry Goudreau's Boston." No. And that's what
5 nominative fair use is.

6 Now as far as the costumes go, in the preliminary
7 injunction hearing, we introduced our trademarks, registered
8 trademarks, one of which is the costumes as a group, and that
9 was one of the trademarks that was admitted into evidence.
10 They cannot use all our costumes. It's our trademark. It was
11 part of the preliminary injunction hearing. They just can't
12 use it. And it's flagrant.

13 The reason we didn't join in the motion, as I was
14 telling Ms. Willis, is some of this what happened in Australia
15 and all that, it's really -- we discussed it at the preliminary
16 injunction hearing; it's water under the bridge. We would
17 think, though, that now is the time to get -- for Sixxus to
18 get serious and say, all right, you can make reference to Disco
19 Kings featuring the original Indian from the Village People or
20 something, maybe even if you sing some of our songs, we can't
21 stop them from singing some of our songs. If you want to pay
22 homage for five minutes of something to the Village People,
23 maybe we consider allowing it. But when they co-opt the entire
24 group so that, going forward, whatever name they're calling
25 themselves is really to the outside world the Village People,

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1 that's a flagrant trademark violation.

2 THE COURT: It looks that way to me.

3 It would be -- I mean, this is not a perfect analogy,
4 but if -- let's say there were five guys and they were
5 performing for Blue Man Group, and then they're no longer
6 performing for Blue Man Group, and they start a show called Fun
7 and Magic, Formerly Blue Man Group, the public is going to
8 think, oh, this is -- the Blue Man Group just changed its name,
9 and everything else is continuing the same.

10 Now, here, the performers are the same, but it's just
11 they no longer have the legal right to lead people to believe
12 that the -- that they are the group associated with the
13 trademark. Right now, somebody else is associated with the
14 trademark, and the trademark covers not just the two words, but
15 the concept of we're going to have these six characters.

16 Now, I'm a little bit hampered because I don't have
17 any law from either side on "formerly" and how that can be
18 used. It seems to me, one -- so I'm just going on a gut
19 feeling here. It seems to me that one can state the historical
20 truth that one is formerly of the Village People. If the Kings
21 of Disco are all formerly members of the Village People, it
22 seems to me they can state the historical fact - Kings of
23 Disco, all formerly of the Village People.

24 If one or more of them wants to say I'm formerly the
25 Cowboy or formerly the Leather Man or whatever, it seems to me

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1 they can say that.

2 But I was confused, frankly, when I saw Kings of
3 Disco, Formerly Village People, that looks to the public like
4 there's been only a name change and that the everything else is
5 the same. And if that's true, and everything else is the same,
6 then it seems like the trademark in the characters and the
7 costumes is being infringed on.

8 And it also, since there is a legal licensee, the
9 public is going to be confused because they're going to say,
10 well, wait a minute, this Kings of Disco is Village People;
11 then who is this other guy? And this other guy is actually the
12 one who is legally entitled, at least based on what I saw at
13 the hearing, to use the name.

14 So I'm not understanding, Ms. Matz, how what your
15 clients are doing is kosher.

16 MS. MATZ: Your Honor, the intent was -- the intent in
17 choosing that name was to fit under a meaning that would
18 designate the historical fact. If the Court feels that that
19 name is confusing and it's a matter of -- right now it's "Kings
20 of Disco, Formerly Village People." If it should be "formerly
21 of" or formerly -- "Former Members of," if it's just a matter
22 of a couple small tweaks like that that the Court feels that
23 would make it less confusing, my clients would probably be
24 amenable to doing that because the intent was not to confuse
25 the public. The intent was to reference the historical fact

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1 that all six of the people in the group were formerly
2 performing as Village People. And this is --

3 THE COURT: I think "of" or "Members of" would make a
4 big difference.

5 MS. MATZ: Okay. We appreciate the clarity.

6 One of the struggles here in the TRO is that the
7 wording is incredibly broad, and it's trying to enjoin all uses
8 of Village People, which is why I started out by saying that we
9 don't feel that any should be enjoined.

10 THE COURT: There are some other problems. I'm just
11 looking at the exhibits. Again, I'm not sure this is -- the
12 extent to which this is Ms. Willis' beef as opposed to
13 Mr. Levy's, but how does your client get to the words Official
14 Village People on its Facebook page?

15 MS. MATZ: So I'm actually happy that you brought that
16 up, because there's a couple things about the exhibits that I
17 wanted to address as well.

18 The first is that we can't change that, and we have
19 put in a request to Facebook to change it. The clients are
20 actively trying to consistently rebrand at the moment.
21 Notwithstanding that we're not giving up our original claims
22 and defenses, they are, for the pendency of this, trying to
23 rebrand to something that will be acceptable either under a
24 fair use or under a likelihood of confusion while this
25 litigation is being is being finished.

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1 MR. LEVY: We want to address --

2 MS. MATZ: Can I finish?

3 MR. LEVY: One point. There should be some corrective
4 advertising. One, I do not know whether what Ms. Matz is
5 saying is correct, that it can't be changed, but to the extent
6 that it can't, there has to be some corrective advertising.
7 Drawing analogies to advertising where companies compare their
8 price with another product, you cannot mislead the public.

9 It is very misleading to say on the Twitter account,
10 it says Official Village People; on the Facebook, it says Disco
11 Kings at Official Village People.

12 Frankly, I don't think this is as innocuous as
13 Ms. Matz is saying. I think this is too cute by a half. You
14 can't have that. I also don't think when you use the word
15 "formerly," just going back to the first point, you can say
16 this group consists of so and so, formerly of, but you can't
17 have the whole group be formerly of.

18 It could be "Disco Kings featuring Ray Simpson and
19 whoever it is, formerly of Village People," but you can't say
20 "The Group Disco Kings, Formerly Village People," because they
21 weren't formerly Village People.

22 THE COURT: I agree. "Kings of Disco, Formerly
23 Village People," which is what they've been doing now, is not
24 acceptable.

25 MR. LEVY: I can brief nominal fair use, if you want,

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1 Judge.

2 THE COURT: "Kings of Disco, Formerly Members of
3 Village People" seems fine.

4 MS. WILLIS: No, your Honor. I'll weigh in on that.
5 It's too broad in that the problem with that, your Honor, is
6 that the Kings of Disco were not actually formerly of Village
7 People. It's a brand-new name they've just created.

8 THE COURT: But the individuals are formerly members
9 of Village People.

10 MS. WILLIS: Absolutely. So in this case, your Honor,
11 there's no case law - and I've searched, your Honor - that
12 would support a contention that a group or a company, for
13 example, has some sort of a rights of association, but there
14 are individuals have that right, Raymond Simpson, Felipe Rose.
15 They all have individual rights of association. They were a
16 former member, right.

17 So in this case, your Honor, it would be proper, and I
18 would not have a problem with it, if they stated "the Kings of
19 Disco, featuring Felipe Rose and Alex Briley, former members of
20 Village People" or "Featuring Raymond Simpson, Felipe..." So
21 they have to, your Honor, qualify by stating their individual
22 association, not collectively like that. That's where you get
23 into the confusion.

24 So I would not have a problem if they stated their
25 names as former members. Case law supports that.

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1 MS. MATZ: Your Honor, if I may. I'd like to address
2 that point.

3 First of all, I disagree with that given that the
4 corporation here was formerly the licensee. So in other
5 instances where courts have been deciding the rights of former
6 members of a group, those cases did not deal with situations
7 where all of the people who are now going out and performing
8 were former members of the group, and they also do not address
9 a situation where the actual corporate defendant was the
10 licensee and was formerly this group.

11 So I don't think it's misleading at all, like your
12 Honor said, for it to be "Kings of Disco, Formerly of" or
13 "Former Members of."

14 MS. WILLIS: No. Here's the problem, your Honor. It
15 was the Sixuvus Ltd., that was the actual licensee. Not the
16 Kings of Disco.

17 THE COURT: Right, but if the Sixuvus wants to create
18 Kings of Disco, I don't see why it's necessary to name the
19 individuals as part of the title of the act as long as it's
20 clear that all that's being said is the members of Kings of
21 Disco were formerly members of the Village People.

22 And I think the clearest, simplest way to say that is
23 "Kings of Disco, Formerly Members of Village People," and
24 there's no confusion about that. It's very clear that the
25 people who comprise Kings of Disco are formerly members of the

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1 Village People, assuming that's true.

2 If, at some point, somebody drops out and a new person
3 comes in who was not formerly part of Village People, then it
4 would have to be changed. It would have to be five out of six
5 of whom are formerly members of Village People, but I'm still
6 troubled by a couple of things.

7 I'm troubled -- I don't understand why you can't take
8 down a Facebook page or drop a Twitter handle. And to suggest
9 that your client's group, Ms. Matz, is the Official Village
10 People, look, apart from the confusion, they're still
11 defendants in this case. Every day that that's up there,
12 that's ka-ching ka-ching for the plaintiff or the intervenor.
13 So I don't understand how they can argue that they have any
14 right to @villagepeople on Twitter or the, quote/unquote,
15 Official Village People Facebook page. And I don't think
16 anybody makes you, once you sign up for Twitter or Facebook,
17 stay for life.

18 MR. LEVY: Costumes, the costumes. Let me just bring
19 it up.

20 THE COURT: Hold on, Ms. Matz.

21 MR. LEVY: The costumes on the Facebook page, when it
22 says Kings of Disco, behind it are the guys dressed up as the
23 Village People. So now if I'm a consumer, even if you put the
24 restriction "Featuring Former Members of," now you see them
25 dressed up as the Village People, doesn't that defeat the whole

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1 purpose? It's, like, oh, that's the Village People.

2 THE COURT: It does.

3 It seems to me, that to be fair, these images have to
4 have captions making clear here's a picture of us when we were
5 Village People. I think the problem isn't just the photograph;
6 the problem is the act.

7 MS. WILLIS: Yes.

8 THE COURT: If the Kings of Disco act looks like
9 this picture, then there's a problem because the defendants
10 don't have the right to be the Cop, the Leather Man, the Biker
11 -- the Cowboy, etc., and that's the larger problem - the act
12 itself is infringing.

13 And what I think has to happen here is, they -- as
14 Mr. Levy said, maybe there's room for some brief homage, and
15 that's something I think the parties should work out, but these
16 guys have to come up with a new act.

17 They can't change their name to Green Man Group and do
18 the same act as Blue Man Group if somebody else has the license
19 for it. And they can't do the act they've been doing for 30
20 years when they don't own or have rights to the trademark. So
21 these photographs are arguably not misleading because the
22 photographs are showing what the act really is. It's the act
23 that's the problem.

24 I think if the Kings of Disco want the world to know
25 that this is what we look like when we are Village People, they

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1 have to make it clear on their website that here's our act when
2 we were Village People, and not suggest this is our new act.

3 I mean, I'm all ears, Ms. Matz, as to why it would be
4 okay for Kings of Disco to go out and perform as Village People
5 any more than it would be okay for them to go out to perform as
6 Blue Man Group without a license or to go out and perform as
7 the cast of "Hamilton" without a license.

8 MS. MATZ: Your Honor, I'm sorry. There have been
9 several points raised that I've been trying to respond to. If
10 you don't mind, I'd be happy to respond to those, or if
11 Ms. Willis would like to go, I can go after her.

12 THE COURT: You can go ahead.

13 MS. MATZ: Thank you. I appreciate that.

14 First of all, we don't have any objection to
15 clarifying the photographs make clear that they were taken when
16 our clients were Village People, that's not an issue, because
17 they are historical. Our clients have a lot of historical
18 material, and nothing should prevent them from being able to
19 show their past history. But if the Court would like some
20 clarification, that, again, is not an issue.

21 The other thing that was raised was, and I'm going to
22 address the costume flap, but the other thing that was raised
23 was the social media handles. So, the issue here is that it's
24 only the URLs that our client is having trouble changing. And
25 our client -- the intervenor essentially requested that those

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1 URLs be turned over to her, which I think is inappropriate for
2 a temporary restraining order.

3 Our clients have already changed the name on Twitter
4 to Kings of Disco. Now they can't change the URL. Twitter
5 doesn't allow that functionality. We can look and see what we
6 can do about transferring it or something, but those are not --
7 those types of actions are not things that we can do without
8 Twitter or without Facebook, and I'm only talking about the
9 URLs.

10 THE COURT: Let me make sure -- I'm going to show my
11 ignorance. Let me make sure I know what you mean by the URL.

12 MS. MATZ: That's fine.

13 THE COURT: Tell me what you mean by the URL.

14 MS. MATZ: So when you go to a website, you type in --
15 if I was going to the Southern District, and I don't have the
16 exact address, I'd type in www.southerndistrictofnewyork. For
17 example, on Twitter, there is a URL that is
18 twitter.com/villagepeople, okay? That is the URL. It's like a
19 phone number. It's a unique identifier that tells your browser
20 to go to that website.

21 Then when you get --

22 THE COURT: Hold on.

23 MS. MATZ: Go ahead.

24 THE COURT: Why can't you just tell Twitter we're
25 dropping this and cancel it and go away? Like, if I had a

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1 Twitter account, twitter.com/cathyseibel, and I died, somebody
2 eventually will come along and say she's dead, take that down,
3 then you can have a new Twitter account,
4 twitter.com/kingsofdisco. And then people who are looking for
5 Village People, won't be sent to your site; they'll be sent to
6 the licensee's site.

7 MS. MATZ: The answer to that question is that the
8 information and our followers, and it would be unfair to ask us
9 to turn those over without being allowed to transfer that
10 somewhere else.

11 THE COURT: I'm not suggesting you turn it over. I'm
12 suggesting you take the content, you put it on
13 twitter.com/kingsofdisco, you call up Twitter and you say we
14 don't want this anymore. And if Ms. Willis wants to call up
15 Twitter and ask for that handle, she can do it.

16 MS. MATZ: And that's part of what our clients are
17 trying to do, but that is not something that they can do
18 without Twitter's help or without Facebook's help. And
19 actually, Facebook may have been -- I know they've been in
20 communication with Facebook. I've seen the e-mails. So it's
21 part of what they're trying to do. But in the meantime, they
22 shouldn't be shut down because that information would be lost.

23 And for the record, they haven't posted anything, at
24 least on Twitter, what I'm looking at. The last post here was
25 January 23rd. You see the new name Kings of Disco, and then

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1 you see this post, that was done during the TRO. And you can
2 tell that because they even included the disclaimer language at
3 the bottom.

4 When you change the visible name, the username, which
5 is what they did change, that's the piece they have control
6 over, it changes for all the tweets, all the historical tweets,
7 as well. So it is -- they are taking steps to move toward
8 that. It's not something that can happen immediately.

9 And the information --

10 THE COURT: What about Facebook? It looks like
11 they're still -- their Facebook page is still called Official
12 Village People.

13 MS. MATZ: So that's the -- you're talking about the
14 URL or the username? Yeah, that's the username they've put in
15 to be changed, but they don't want to lose the verification
16 status. They want a new verification status for Kings of
17 Disco, and that's what they're trying to do.

18 THE COURT: I'm confused, and I don't know from
19 Facebook, but I don't understand why they can't take the
20 content, which they own, which is stuff that -- I mean, not the
21 comments and stuff, I guess, they didn't create, but the rest
22 of the material that they created and put it on a Facebook page
23 that has the URL Kings of Disco. And if, for some reason that
24 I don't understand, Facebook doesn't allow you to ever leave,
25 once you sign up, you're there forever, it seems, at the very

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1 least, there ought to be a big banner across the top saying "If
2 you're looking for the Village People, here's their Facebook
3 page, that's not us."

4 But I still am not convinced that you can't notify
5 Facebook that you want to drop out of Facebook. And Official
6 Village People can drop out of Facebook, they can come back to
7 life as Kings of Disco, and then there won't be confusion. But
8 people who are looking for the concert of Mr. Willis and Google
9 Village People, your client's Facebook page is going to come
10 up.

11 MS. MATZ: Your Honor, the answer to that is, again,
12 the information. If you just drop out of Facebook, if you shut
13 down your page, you lose all the historical data. So the point
14 that I'm trying to make is what our clients are trying to do is
15 transition that data.

16 THE COURT: What do you mean by historical data?

17 MS. MATZ: For example, their followers and their
18 fans - those shouldn't just be shut down. And if the issue is
19 taking some steps to mitigate confusion, putting something up
20 across the top of the photo, the banner photo or something to
21 make it clear that these are former members of and they are not
22 actually the Village People, that's not a problem. My clients
23 are happy to take steps to mitigate any confusion that the
24 Court thinks is likely, while the things that they can control,
25 like the banner photo or a post pinned to the top or something

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1 along those lines, that's not an issue.

2 The issue is that our clients shouldn't be forced to
3 shut the page down entirely on a TRO hearing without a
4 briefing, because if they shut the page down and they lose all
5 that information, there's no getting it back, and that's the
6 problem with this kind of requests for temporary relief.

7 So again, my clients will be perfectly happy to
8 include some information across the top, the places that they
9 have control over, to mitigate this while the issue is briefed
10 and while they are trying to make this change, but to force
11 them to shut it down immediately and delete it and lose all the
12 data is actually in the nature of a permanent injunction.

13 THE COURT: I mean, we do have -- my order came out, I
14 don't know -- I'm trying to go back and see when --
15 February 16, so it's been a month.

16 Why, in the last month, haven't they been able to take
17 care of this?

18 MS. MATZ: So initially when your order came out, your
19 Honor, there were two orders. There was the first one denying
20 it and then there was the second one explaining it. And my
21 clients were attempting to choose a new name and hoping that
22 the explanation portion of the order, frankly, would give them
23 some clarity, and they have taken steps since then to change
24 it. And, again, we can make it faster or we can do certain
25 things that are in our control, but we can't speed up

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1 Facebook's response. That's just not something that's within
2 our control.

3 THE COURT: Yes, but you can put -- you can do a
4 couple of things. You can put a banner up saying, We are not
5 Village People; if you're looking for Village People, go to
6 whatever site, whatever URL or whatever Facebook or Twitter
7 handle the intervenor is using.

8 The other thing you can do is put up a banner saying
9 this Facebook page and this Twitter feed is being shut down in
10 seven days. Anybody who wants to follow us on our new page for
11 Kings of Disco ought to follow us there.

12 MS. WILLIS: I agree with that, your Honor, 100
13 percent. And may I chime in now?

14 THE COURT: Yes.

15 MS. WILLIS: Absolutely, your Honor, that's what has
16 to occur, and that's the purpose of this TRO, because what
17 Ms. Matz is missing here is that the material that she's
18 referring to is relating to the Village People. That does not
19 belong to them. That belongs to the owner of the mark, Village
20 People, so they have no right.

21 And, for example, they're talking about fans. Those
22 are Village People fans, your Honor. And so what they're
23 trying to do is to confuse the public by trying to somehow
24 continue to present themselves as Village People. Now, your
25 Honor, they're being disingenuous finally in that all they have

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1 to do is to go right now - it will take them ten minutes - and
2 create a new Facebook page, a new Twitter account for the Kings
3 of Disco.

4 I will agree that we will allow them, I don't know,
5 five days or whatever, seven days, make a post and say this is
6 our new handle; go here. And then they are to either surrender
7 those URLs or they can shut it down completely, we don't care
8 because, your Honor, quite frankly, we're not interested in the
9 Official Village People handle. We already have, you know, a
10 handle, but we are very much interested in preventing their use
11 and misleading the public that they are Village People.

12 And also, your Honor, that is a certified Official
13 Village People handle, meaning that Twitter, Facebook, they
14 have certified that these people here are Village People, your
15 Honor, and that's what Ms. Matz doesn't want your Honor to
16 focus on here. So they cannot use it under any circumstances
17 because they don't have the right to the name and it's
18 trademark infringement. But, again, I will agree to allow them
19 to make a post, create their new name, your Honor, and say here
20 is our new handles; please visit us there. And I'd like to see
21 it shut down immediately following, and they can shut it down
22 by, your Honor, by simply pressing a button to Twitter, to
23 Facebook saying we want to shut down this, and it's done within
24 a matter of hours.

25 THE COURT: Let me ask you, Ms. Matz. You said you

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1 were going to talk about the costumes and the characters and
2 what gives your clients the right to continue to dress as the
3 characters and wear the costumes.

4 MS. MATZ: Yes, absolutely. So, the first thing is,
5 is that I don't -- the question of how broad or how enforceable
6 their right to the character mark is, I don't think is a
7 question that has been answered. There's no dispute that at
8 least some of our clients were -- Felipe Rose, for example, has
9 been dressing up as a Native American since before Village
10 People was formed.

11 So the question of whether or not they are not allowed
12 to perform in costume on stage, I think the answer is they
13 absolutely are. I don't think they have to change their whole
14 routine.

15 Their routine includes, as you know from the
16 preliminary injunction hearing, a lot of non-Village People
17 songs that they perform on their own. Not all the costumes
18 that they wear during their entire performance are even Village
19 People costumes. The question here is likelihood of confusion.
20 And there's no proof -- you know, the intervenor has not shown
21 a likelihood of success of saying if tickets are sold to an
22 event called Kings of Disco, Former Members of Village People,
23 that people are going to be confused by the costume, because I
24 don't think they would.

25 I think that they would know that we're talking about

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1 people who were former members of the Village People,
2 performing some of their songs, performing some of their own
3 songs, performing covers of other songs. I don't think people
4 would be confused by that.

5 THE COURT: So you're conceding it's trademark
6 infringement; it's just not confusing?

7 MS. MATZ: No. I'm not conceding it's trademark
8 infringement because --

9 THE COURT: That's what I haven't heard. I mean,
10 Felipe Rose dressing up as a Native American is one thing. Six
11 guys dressing up as a biker, a cop, a cowboy, a Native
12 American, a military guy, and a construction worker is entirely
13 different.

14 So, the fact that Felipe Rose is a Native American and
15 dressed up as a Native American before Village People doesn't
16 help you at all in terms of why it's okay for these six
17 costumes and these six roles to be played by your guys without
18 a license.

19 MS. WILLIS: And --

20 MS. MATZ: I'm sorry, your Honor. You were still
21 talking. I apologize. Go ahead.

22 THE COURT: There's two prongs. One is, does it
23 infringe the trademark; and the other is likelihood of success
24 and irreparable harm.

25 I'm trying to fathom how you have any defense to the

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1 claim that continuing to perform in these costumes and in these
2 roles without a license isn't trademark infringement.

3 If your guys dressed up as Aaron Burr and Thomas
4 Jefferson and started singing the songs from "Hamilton" without
5 a license, it would be pretty straightforward.

6 Why is this any different, just because they used to
7 have a license.

8 MS. MATZ: So the point I was making is, it is not
9 trademark infringement because the second element of trademark
10 infringement is likelihood of confusion. And I don't think
11 that there is likelihood of confusion here.

12 If two people from "Hamilton" went out and said, hey,
13 we were formerly in "Hamilton" and they went out and did a
14 cover in the costumes, there's no evidence that that would be
15 confusing, because purchasers who are purchasing the ticket, as
16 long as they're clear from the billing that the band they are
17 not -- they are going to see is not actually that band, that's
18 the question here.

19 So when they show up and they purchase the ticket that
20 says "Kings of Disco Featuring Former Members of Village
21 People" or "Former Members of Village People" or something that
22 falls into that historical reference kind of fair use thing and
23 they show up and they see former members of the Village People
24 singing Village People songs and in some of the costumes,
25 they're not going to think that they're seeing the

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1 officially-licensed band, and that's my point that; that
2 there's not going to be likelihood of confusion. And that is
3 the crux of the trademark infringement question.

4 So, no, I don't think it is trademark infringement
5 because I don't think that there's a likelihood that anyone's
6 going to be confused.

7 MR. LEVY: Your Honor, there's a legal term for what
8 I'm hearing from Ms. Matz. It's called hooey, hooey, from law
9 school, is what it's called. It makes no sense at all.

10 You have, a month after the Court order, there is
11 still -- as we've gone now over, just to sum up, they're still
12 using social media to call themselves the official group.
13 They're using pictures of the group in costume. They're saying
14 Disco Kings, Formerly Village People. They're performing.
15 They testified at the preliminary injunction hearing. Half
16 their act are Village people songs.

17 I suggest, as the Court noted, if they want to do a
18 10-minute homage to the group loosely, that would probably be
19 okay, but when they co-opt the entire group -- Mr. Rose
20 testified at the hearing that they've been basically preserving
21 the act the way it's been for 30 years.

22 So now they're taking the act that they had in the
23 license from us, which one of the issues was, is my client
24 regulating it, making sure it's true to the act as developed by
25 Mr. Belolo and Mr. Morali? And it is. Now they're taking that

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1 same very act and they're just duplicating it with all this
2 other baggage and --

3 MS. WILLIS: Passing it off.

4 MR. LEVY: And then they have the audacity to sit here
5 and say, Oh, I don't know, no one's going to be confused.

6 My suggestion is they should bank on their own
7 talents. And if they want to perform, they can perform as long
8 as it's not grand rights and they're not acting out anything,
9 they can sing Village People songs, they can sing Beatles
10 songs. They can sing whatever they want.

11 If they want to do a five-minute homage to disco -- in
12 fact, they testified at the hearing that they wrote one song.
13 The one original song, I think, they wrote is a collage or
14 medley of a lot of disco-type songs together. If they want to
15 do that, be my guest, but they can't have the whole show where
16 90 percent of it is they're dressed up in our costumes. I
17 suggest they should come out dressed as -- one should be an
18 actuary, one can be a plumber, one can be an accountant, one a
19 lawyer, you know, maybe a parody.

20 MS. WILLIS: That's right.

21 MR. LEVY: But they can't use our costumes. It's a
22 trademark.

23 THE COURT: But what about the argument that Ms. Matz
24 just made, which is, part of your burden to prove the
25 infringement is that the people will be confused, and as long

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1 as they say we're not Village People anymore, we're Kings of
2 Disco, no one will be confused.

3 MR. LEVY: A rose by any other name would smell as
4 sweet.

5 Anyone seeing it is going to walk out and say I just
6 saw the Village People. It's taken them a long time to make
7 this change and it's hard, all that, one of the interesting
8 things about Ms. Willis' papers, which I found was very good
9 research on her part, is the name Disco Kings was filed for
10 trademark registration by Ms. Matz in August, so they've been
11 sitting with this name since August. So this wasn't like, Oh,
12 gee, the Court ruled in February and we were caught flat
13 footed. They've known. So I just think there's a lot of
14 crocodile tears here.

15 We tried. We went up to Magistrate Smith. We'll try
16 to sit down and work it out, but if they're going to take these
17 extreme positions, then we'll go to trial and we'll go for
18 damages.

19 MS. WILLIS: Your Honor, bottom line is, I'm really
20 harmed by their continued use of the social media. My agents
21 have all reported it. We're losing shows. We have fans
22 confused.

23 So, as I stated earlier, yes, your Honor, I'm willing
24 to say, yes, let's come up with a certain period of time, five
25 days, seven days. They can immediately make a post saying

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1 here's our new handle. They can create those handles in five
2 minutes. I could create it for them, your Honor, if they want
3 me to. I know how to do it. Facebook, Twitter - you can
4 create a new account at any point you want.

5 And then, within that time, though, I want the Court
6 to order them to stop using Official Village People social
7 handles because it's infringing our mark. It's as simple as
8 that, your Honor.

9 So yes, we've bent over backwards to attempt to assist
10 them. They know that they could easily turn over this, but
11 they want the certification, your Honor. They're not entitled
12 to Twitter, Facebook certifications for the Kings of Disco
13 right now, so they're trying to say, Oh, let's keep this
14 Village People certification. They're infringing.

15 So your Honor, that's what I'm willing to do, but I'm
16 being harmed, which is why I'm here. We're losing accounts.
17 We're just in disarray because of them, so I'm hoping the Court
18 grants this relief.

19 THE COURT: Well, I think a couple of things. I
20 think, notwithstanding Ms. Matz's creativity, there is a
21 likelihood of confusion because the Kings of Disco are doing
22 the same act as the licensee. And if you're looking on
23 Facebook and you want to go see the Village People and you see,
24 well, here's Kings of Disco, these guys are formerly members of
25 the Village People and they have the same outfits, and then you

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1 look at Victor Willis, and you say, well, who is he, which of
2 these is the group that I want to see, it's confusing, because
3 the act is the same as the licensed act. And honestly,
4 particularly because the defendants are the people who have
5 been doing it for decades, people are going to think that
6 Victor Willis is the interloper or the cheater, and he's
7 actually got the license right now.

8 This is just an application for a TRO, but it seems to
9 me, I don't see how somebody who is not familiar with this
10 litigation wouldn't be confused as to who is entitled to be
11 this band. And the confusion arises in part from something
12 that Mr. Levy said I think the first time we met, which is,
13 like, this is not the Rolling Stones. People are not looking
14 for Mick Jagger. These are not the Beatles. People are not
15 looking for John, Paul, George, and Ringo.

16 If Pete Best, who used to be the drummer before Ringo
17 came along, went out and started a group and he called it "The
18 Spiders, Formerly the Beatles," that would be confusing. And
19 if he called it -- he said "A Former Member of the Beatles,"
20 but he used their patter and dressed up in their costumes, it
21 seems to me, it could be confusing; and here, more so,
22 particularly because there is some knowledge on the part of
23 fans that there's been litigation.

24 The fact that the defendants are continuing to perform
25 the act and use terms like "Official Village People," I think

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1 it makes it seem like the licensee doesn't have the rights that
2 it has.

3 It's only a TRO. Maybe we'll have another PI hearing
4 and I'll be convinced that it's not confusing, but if I'm
5 sitting down saying, hey, I want to go see those guys I
6 remember from the '70s, I'm going to be confused as to who is
7 allowed to be the Village People.

8 I may not be confused as to who historically has been
9 Village People, but in terms of the likelihood of confusion for
10 live performances, I think if somebody puts in "Village
11 People," they're going to get both groups, and they could
12 easily think that, even with the change to "Formerly Members of
13 Village People," they could easily think that, well, this is
14 just a name change and everything else is the same, who is this
15 other interloper pretending to be Village People when the
16 interloper is actually the one whose got the license.

17 I also, as I said, you can tell I'm not on Twitter or
18 Facebook, but I'm pretty sure that you can send messages to
19 your followers. So I don't see why you can't tweet out we're
20 shutting down this Twitter account, follow us at Kings of
21 Disco, and then you bring your followers with you.

22 Or if you've got Facebook followers - I don't know how
23 many there are - but you could make a list of them or you can
24 put out -- send out a Facebook message to all of them saying
25 we're shutting this down and we're going to reopen the next

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1 phase under a new name.

2 MS. MATZ: Your Honor --

3 THE COURT: I think there's just a likelihood of
4 confusion just from the simple fact that you've got two groups
5 doing the same act and only one of them's got the license.

6 And I think what ought to happen here is, you ought to
7 go back to Judge Smith and work out a *modus vivendi* - if you'll
8 forgive the Latin - a way to live with each other going forward
9 and have limits.

10 But Ms. Matz, I think your clients are doing something
11 very risky right now, which is the same, or not quite the same,
12 but practically the same as if they, you know, were performing
13 any other performance troupe's act without a license.

14 And if you want to call it a tribute band or a cover
15 band, I haven't gotten any law on that, but I don't think that
16 that is the message that's being sent. The message that's
17 being sent is that we are the Village People, we've just
18 changed the name, everything else is the same.

19 MS. WILLIS: Yes.

20 THE COURT: So I'm going to enter some temporary
21 relief. I think the intervenor has met the prongs. And I want
22 to talk in a minute about a lot of loose ends that were left
23 after the prior hearing.

24 Am I correct, Ms. Willis, that Red Entertainment and
25 Pennsylvania Horticultural have not been served yet?

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1 MS. WILLIS: No, your Honor. I had to issue the
2 summons on them, and it's been issued today finally.

3 THE COURT: I don't think I have jurisdiction over
4 them yet, so I don't think I can enjoin them from doing
5 anything.

6 MS. WILLIS: No problem. They've already indicated
7 they've stopped, which is wonderful. So I'm satisfied with
8 that, your Honor.

9 THE COURT: I'm just going to mark up this proposed
10 TRO.

11 MS. MATZ: Your Honor, I hear that you're going to
12 mark up the proposed TRO. I do have a couple of questions.
13 The first is that, are you enjoining any use of Village People,
14 or are you going to exclude the items we've discussed, "Former
15 Members of" and some -- if that is in tandem with not being in
16 all the costumes temporarily while we have the preliminary
17 injunction hearing? Because I do think that stopping my
18 clients from performing at all or any use that the Court has
19 kind of indicated would not be confusing would be extremely
20 unfair.

21 THE COURT: Do they have performances booked this
22 month?

23 MS. MATZ: I'm trying to look on their -- their
24 website is shut down right now. They actually did shut that
25 down about a week ago while they're trying to rebrand.

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1 No. I think it's next month, but let me just look at
2 one thing before I say that for sure.

3 The other thing I would ask while I'm looking for this
4 is that any relief that relates to the trademark -- that
5 relates to the social media not require a deletion of the
6 account because, like I said, that would, in essence, be a
7 permanent injunction because the data would be lost and there
8 would be no way of getting it back after that.

9 THE COURT: I still don't understand why that is. I
10 don't understand why you can't -- you can tell from Twitter who
11 is following you, right?

12 MS. MATZ: Yes.

13 THE COURT: And they communicate with you through
14 their Twitter handles. So, why can't you, like, copy and paste
15 those names into a document, and then you'll have them all?

16 MS. WILLIS: You can. And I've done it with their
17 Facebook page. I have every one of them. You can do it.
18 Absolutely.

19 MS. MATZ: But the point is that this is a temporary
20 restraining order, and it shouldn't be a situation where we are
21 required to delete information we can't get back.

22 If the Court wants us to post something that says
23 we're no longer using this account, we're rebranding the Kings
24 of Disco and leave that post up and not post anything else in
25 the meantime while we're trying to do the transfer, that would

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1 be perfectly acceptable, but requiring a deletion of the
2 account would be tantamount to permanent relief and merely
3 having a list of the followers is not the same as all the data
4 associated with the account.

5 THE COURT: But you need to tell me what you're
6 talking about, because so far, I haven't heard any data that
7 you would lose except the identity of the followers, and it
8 seems to me that's easy. And the information that you guys
9 posted, you still have. So, I don't know what you're going to
10 lose, except comments.

11 MS. WILLIS: They're going to lose the name Official
12 Village People, your Honor, which they have no rights to use.

13 And again, your Honor is correct, I have gone -- and
14 I'll be glad to provide them with copies, your Honor. I have
15 the entire Facebook page, Twitter, all of their comments,
16 dating back three to four years, all archived. They can do the
17 same, and I would be willing to provide them a copy. But the
18 bottom line is, they have no rights to that historical data.
19 It belonged to Village People. They obtained that as the
20 licensee. They're no longer the licensee.

21 However, as a courtesy, sure, you can go in and copy
22 and paste it all. It's that simple.

23 MS. MATZ: Your Honor, it's not that simple. And the
24 association with the users to the account would be lost, as
25 well as all the postings and all the comments. If those can be

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1 transferred, we will endeavor to do that. My request is only
2 that you not force us to delete it, okay? Putting up a banner
3 message that says something like "We're rebranding the Kings of
4 Disco, this is going to be our new page" and leaving it alone
5 and not posting anything new, I think that that would be a
6 perfect compromise if the Court is concerned about the social
7 media. And we're not trying to keep the verification for
8 Official Village People. What they're trying to do is get a
9 verified status as Kings of Disco. That is what our clients
10 are trying to do.

11 And just so the Court knows, our next performance is
12 in April.

13 THE COURT: But you don't get to keep Official Village
14 People until you have Official Kings of Disco. I don't know
15 what it takes to get a verification, but one doesn't really
16 have to do with the other.

17 Here's what I'm going to order, and I'm going to need
18 somebody to give me a new proposed TRO that encompasses this
19 because it's going to be too hard to mark this one up.

20 With respect to the Facebook and Twitter: Immediately
21 there needs to be a prominent banner on the first page that a
22 user would hit saying, This is not the site for Village People;
23 if you are looking for Village People, go to... and then
24 Ms. Willis will supply whatever handle or URL she wants to go
25 in there.

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1 There should also be a banner saying, This page or
2 this Twitter account is being shut down shortly. And you can
3 tell people that if you want to continue to follow Kings of
4 Disco, go to whatever Facebook page or Twitter account Kings of
5 Disco is going to use.

6 I'm not going to direct that the Facebook -- and I'm
7 going to direct that the -- well, let me back up.

8 I'm not directing that the Twitter account and the
9 Facebook pages be deleted, but I'm directing that they be
10 disabled and frozen within seven days, how ever that can be
11 done.

12 So if there is some risk, I'll let you show it at a
13 hearing, Ms. Matz, as to why you wouldn't be able to retrieve
14 something of value that it's impossible to archive and it's
15 impossible to transfer. If that's the case, we'll deal with it
16 then, but they have to be disabled to the maximum extent
17 possible. So if Facebook can black it out within seven days,
18 by next Friday, they'll black it out. If it's not possible to
19 black it out, but it's possible to make it so that nothing can
20 be added or subtracted and when people go there, they can't do
21 anything on it, that has to happen, because the public is being
22 misled that Kings of Disco is Official Village People when it's
23 not.

24 Any photos on these pages in the meantime have to
25 clarify that these photos are historical; in other words,

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1 they're from when we were Village People. And pending further
2 hearing, the costumes and routines can't be used. The Village
3 People costumes and routines can't be used in live performance.
4 Somebody else has the license for that.

5 MS. MATZ: Your Honor, can I ask what you mean by the
6 routines? Because the songs themselves is a copyright issue,
7 and half of them don't even belong to -- I understand what
8 you're saying about the costumes, but "the routines" I think is
9 a confusing term. And like I said --

10 THE COURT: Maybe there's a better term for it. I'm
11 not saying anything about the songs. They can -- as far as I
12 can tell, nobody is asking me to do anything about the songs.
13 They don't have to change their set-list. And maybe "routines"
14 is not the right word, but there's dance moves and patter that
15 they were using when they were the licensee that was the -- I
16 don't know what you call it.

17 MS. WILLIS: We call it the Village People.

18 MS. MATZ: Your Honor --

19 THE COURT: Everybody is talking at once. The court
20 reporter is only taking me down.

21 To me, there's a whole shtick that goes along with
22 Village People. And maybe, if they're not wearing the
23 costumes, it won't be as confusing. But to the extent
24 there's -- well, to what extent, Mr. Levy, does your client
25 have trademark protection over the dance moves or the patter or

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1 the shtick apart from the costumes and the characters?

2 MR. LEVY: Only within the context of grand rights
3 usage. To the extent that the dance moves and the patter are
4 part of a storytelling with -- the grand rights case, which
5 would be a leading case in this district, is the *Stigwood* case.
6 That's the "Jesus Christ Superstar" case.

7 If there's a finding that the way the songs are
8 presented by acting them through constitutes grand rights, then
9 they have -- then they don't have an automatic right to use the
10 songs. They have to come back to the publisher for a grand
11 rights license, and the publisher is my client. And I'm
12 telling you, we won't issue one.

13 MS. WILLIS: And I won't agree, either.

14 MR. LEVY: Ms. Willis owns part of the publishing,
15 too. We won't issue it.

16 So to the extent that their patter, their dancing
17 falls within the category of grand rights - and Ms. Matz knows
18 those cases, and the *Stigwood* case is the lead case - they
19 can't do it.

20 THE COURT: I don't know those cases. What do they
21 say?

22 MR. LEVY: To the extent -- anyone can sing a song
23 publicly, okay? And anyone -- we don't own -- I don't think
24 there's a copyrighted script that they follow, but to the
25 extent that you act out a song, that's a grand right as opposed

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1 to the common petite copyright, which is what we consider a
2 copyright, and a grand right is a separate license.

3 So if they act it out -- so in the case of "Jesus
4 Christ Superstar," there were 24 songs I believe in "Jesus
5 Christ Superstar." Some act put together a "Jesus Christ
6 Superstar" tribute, and they used 20 of the songs in the same
7 order that it's used in the Broadway play - in your case like
8 "Hamilton" using the same thing - that was considered grand
9 rights usage and it needed a grand rights license.

10 So I guess what I'm telling you is, if they just want
11 to sing the songs, and they're not in costume, and they want to
12 kibitz on stage, and it doesn't really copy the story the way
13 the Village People have always been presented, they can do so;
14 but to the extent that they copy it, that it follows a story
15 format that's been used historically, it becomes a grand rights
16 license.

17 THE COURT: Did their act have a story?

18 MS. WILLIS: Yes. "Y.M.C.A.," for example.

19 MS. MATZ: No.

20 MS. WILLIS: Ms. Matz, if you will.

21 If I might, also there's a routine, your Honor,
22 related to "In the Navy" that's been done historically for
23 years.

24 So your Honor, it's easy to really surmise this. We
25 shall note this as Village People routines, and they are well

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1 known; that's how we can characterize it. They shall not
2 utilize Village People routines, because it would push us into
3 them imitating Village People, which now, you're moving into
4 grand licensing with respect to that. Because if you're going
5 to act like the Village People, right, if you're playing as
6 if -- you're playing a role. If you're doing the "Y.M.C.A.,"
7 you're Village People. If you are doing the "In the Navy"
8 historical routine with the hats, you're Village People.

9 So those are the types of things that we'd like to
10 prevent them from doing here temporarily.

11 MR. LEVY: I think it's almost like -- they'll know it
12 when they -- they know. They know where it's a stock routine.
13 It's like a comedian or something. There's a stock routine
14 they have and then they do riffs off it.

15 To the extent they're using a stock routine, as
16 Mr. Rose testified, they've been the gatekeepers of what they
17 were taught for 30 years. So there is -- when they do "In the
18 Navy," the lead singer walks around and he starts ad libbing,
19 you know, "I can't even swim, I can't even swim, I don't want
20 to be in the Navy, you know," and they run after him - well,
21 that's been in their act for 30 years.

22 THE COURT: That's not ad libbing.

23 MR. LEVY: That's not ad libbing. But to the extent
24 that they want to go talk to the audience and they want to
25 kibitz, we don't control that, but they know what are the stock

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1 routines and what aren't.

2 THE COURT: I'm going to call it --

3 MS. MATZ: Your Honor --

4 THE COURT: I'm going to say that the costumes, the
5 characters, and the stock routines cannot be used in live
6 performances pending further order.

7 And they don't have any shows until when?

8 MS. MATZ: It's in April, but can I be heard on this
9 issue if you don't mind? I was trying not to talk over anyone
10 and it's a little bit difficult. There's a little bit of lag.

11 THE COURT: First tell me, April what.

12 MS. MATZ: I believe it's April -- it is April 27th.

13 THE COURT: Okay. So we've got time to sort this out.

14 MS. MATZ: We do, but --

15 THE COURT: And they've got time to work up an act
16 that won't get them in further trouble.

17 Go ahead.

18 MS. MATZ: I was going to say, so, there's a few
19 things. First of all, grand rights is a copyright issue.
20 There aren't even copyright claims in this lawsuit. And I
21 don't think that there is a story being acted out as in the
22 case of "Jesus Christ Superstar" where there was actually plot
23 and characters and things moving it forward.

24 We're talking about dance routines, which would also
25 be covered by copyright, and again, there's no copyright claim.

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1 And even if there was, there would be no showing of ownership.
2 And the undisputed testimony - and plaintiff conceded this
3 themselves - was that they didn't hire the choreographers for
4 our client; our client did that. They came up with these dance
5 routines. There's absolutely no evidence that they own any of
6 the dance routines. I don't think that they would even fall
7 under grand rights if they did, but this is a complete
8 expansion of the case. These claims aren't even in this case.

9 MS. WILLIS: That's not an expansion at all.

10 THE COURT: Is that correct, Mr. Levy? Are you
11 claiming that the dance routines are trademarked?

12 MR. LEVY: No, your Honor. No, your Honor. First of
13 all, the dance routines -- we are not talking about Fred
14 Astaire.

15 THE COURT: Is the patter trademarked?

16 MR. LEVY: Well, again, yeah, I would say it's part --
17 it's part of the persona of the costumes, because they each
18 have -- the lead singer doesn't want to swim, and the Indian --

19 THE COURT: I don't think -- it doesn't sound like
20 it's part of the costumes.

21 MR. LEVY: My suggestion is this: Why don't we go --
22 maybe they've seen the light. I think they -- I would go back
23 to Magistrate Judge Smith, because I see -- I'm taking notes on
24 what you want on the TRO. I don't want to come back and say --
25 you don't want us to come back every two weeks and say, look,

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1 that wasn't what we had in mind.

2 I'd sit everybody in the room and lock them in there.
3 The last time we went before the magistrate, the problem was
4 everybody was so entrenched in their views, that people weren't
5 budging. And I think, up until now, we can see the Sixuvus
6 people aren't budging too much, but maybe in light of today, we
7 can go back to the magistrate, because otherwise, I'm afraid
8 that every two, three weeks, we're going to come back in and
9 say, wait a second, look at what they just did.

10 MS. WILLIS: I'm not opposed --

11 THE COURT: Here's what I think. There's not going to
12 be any live performance until April 27, so I don't see an
13 imminent risk of harm with respect to a live performance.

14 There is a pending risk of harm from the Twitter and
15 Facebook. So, I think, for the moment, what needs to be worked
16 on immediately is getting those shut down within seven days.
17 And we'll have a PI hearing, if we have to.

18 I am going to send you back to Judge Smith because,
19 Ms. Matz, your guys need to be realistic here. They're not
20 Village People anymore.

21 Do I think it's rotten? Yes. But you know what I
22 think the law is. The law is, at least for now, based on the
23 evidence I've seen, the law sometimes allows people to do
24 rotten things, and your guys have to start facing that.

25 MS. MATZ: Your Honor, --

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1 THE COURT: So I'm going to issue right now a TRO
2 which is limited to what I think is the imminent and ongoing
3 harm. And that's going to -- I think we can actually write
4 this up because it's fairly simple.

5 It's going to require the two banners I described to
6 go up right away. And it's going to require the defendant to,
7 within seven days, disable or freeze, to the maximum extent
8 possible, both of those sites.

9 I don't think there's an imminent risk of a live
10 performance in the costumes or in the characters, so we have
11 time to sort out those issues. And with respect to whether the
12 routines and the moves and the patter are even protectable, I
13 don't know at this stage. It hasn't -- I'm going to need
14 briefing.

15 I'm going to refer you back to Judge Smith. And as I
16 said, you need to work out a way to live together going
17 forward. The defendants are going to be allowed to tell the
18 world that this is a new group; it's compromised of people, all
19 of whom were in Village People, but it's not Village People;
20 and they can sing all the songs, but they can't sing them in
21 the costumes and the characters.

22 And I don't know yet about the patter and the dance
23 moves, but it's not going to help to come up with a character
24 that looks just like the construction worker but he's a
25 plumber; and another one that looks just like the Army guy, but

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1 he's a Marine; and one who looks just like the cop but he's a
2 security guard.

3 You're going to have to come up with characters that
4 are distinct enough that there won't be confusion as to who's
5 rightfully the Village People. And if you want to come up with
6 a chef, and a court reporter, and a ballerina, that's fine, but
7 you know, it's time to start figuring out how everybody is
8 going to make a living going forward.

9 Now, I would like to -- I would like to have -- yes,
10 Ms. Matz?

11 MS. MATZ: I'm sorry. I have a question. I just want
12 to make sure I understand three things because I want to be
13 clear, and I want to give clear direction to my clients.

14 The first is, with respect to disabling or freezing to
15 the maximum extent possible for the social media, if in that
16 seven days we are able to effectuate a transfer, I'm assuming
17 that would be allowable by this order.

18 THE COURT: Yes, as long as Official Village People
19 and @villagepeople are out of commission.

20 MS. MATZ: Understood. The second thing is, I'm
21 assuming the order is not going to prevent the use of "Kings of
22 Disco, Formerly of Village People" or "Former Members of
23 Village People." So if my clients can transfer the name or
24 start their new pages, they can do so under those names and
25 that is not enjoined by this order.

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1 THE COURT: I think the way to avoid confusion is
2 "Kings of Disco, Formerly Members of Village People."

3 I don't agree with Ms. Willis that it has to be
4 individual. I don't think it has to say Kings of Disco,
5 Featuring Ray Simpson, Former Member and Alex Briley, Former
6 Member.

7 I think "Kings of Disco, Former Members of Village
8 People" is clear and it's fair, and there won't be confusion.

9 MS. MATZ: Thank you, your Honor.

10 And my last question is, I heard what you said about
11 the costumes, and I'm assuming that will be the subject of
12 further briefing, but am I clear in understanding that because
13 our next show is not until April, that for the time being, that
14 is not going to be part of this TRO?

15 THE COURT: Only because the harm is not imminent, but
16 if I get wind that they're performing or --

17 MS. MATZ: I understand.

18 THE COURT: -- or booking a show, then Ms. Willis is
19 going to be back here in a flash; and I will, at that time, in
20 all likelihood, enjoin the use of at least the costumes and the
21 characters in live performance.

22 MS. MATZ: Your Honor, I'm assuming we can book a show
23 under "Kings of Disco, Formerly of Village People." I hear
24 what you're saying, that you don't want us using the costumes
25 on stage until we have this further briefing. I completely

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1 understand that.

2 My point is, you just said if I hear they're booking a
3 show, they would -- the way they book is by using a name. It
4 doesn't say "and the costumes and the contract" or anything
5 like that.

6 So they are allowed to continue booking for the
7 future, and I heard what you said about the rest of it.

8 THE COURT: They are allowed to continue booking, but
9 they're not allowed to mislead the other parties into thinking
10 that the show they're going to do is going to be in the
11 costumes playing the characters.

12 MS. MATZ: Okay.

13 THE COURT: So you can book performances, but you've
14 got to let people know that the likelihood is that you're not
15 going to be able to perform in the characters and the costumes.

16 MS. WILLIS: And also, your Honor, the "Formerly of
17 Village People" has to be significantly smaller, so we need to
18 talk about that. It can't be prominently, the words "Village
19 People" and "Formerly," and all of that.

20 MS. MATZ: Your Honor, our client already has made
21 that not prominent. Even in the example Mrs. Willis gave,
22 "Kings of Disco" was much larger than "Formerly Village
23 People." And that was with the intent of it falling into
24 something that wasn't confusing as a historical reference.

25 MS. WILLIS: No, your Honor. It was too large.

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1 THE COURT: What it's going to say now is "Kings of
2 Disco, Former Members of Village People." And the words
3 "Former Members of" need to be the same size as "Village
4 People."

5 MS. MATZ: Okay.

6 THE COURT: And cannot be larger than the words "Kings
7 of Disco."

8 So, anybody seeing it has to be able to tell in a
9 glance that these are former members of Village People. You
10 can't have "Kings of Disco" in big letters and then "Former
11 members of Village People" in tiny letters. You also can't
12 have "Kings of Disco" in big letters, "Former Members of" in
13 tiny letters, and "Village People" in big letters.

14 In other words, "Former Members of" and "Village
15 People" have to be the same size. And that shouldn't be any
16 larger than "Kings of Disco," nor should it be -- but it seems
17 to me, Ms. Willis, as long as "Former Members of Village
18 People" is all the same size font, it really doesn't matter to
19 you how small it is.

20 If "Kings of Disco" is big and "Former Members of
21 Village People" is small, that's good for you.

22 MS. WILLIS: It is, yes, as long as it's significantly
23 smaller than "Kings of Disco."

24 THE COURT: Well, I think it's okay to say "Kings of
25 Disco, Former Members of Village People" all in the same size.

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1 There's not going to be any confusion there, but it can also be
2 smaller.

3 MS. WILLIS: Yes.

4 THE COURT: As long as "Village People" is no more
5 prominent than "Former Members of" and no more prominent than
6 "Kings of Disco."

7 MS. WILLIS: Okay, your Honor. That's acceptable to
8 me.

9 THE COURT: All right.

10 MS. MATZ: Your Honor, I have one other question, and
11 that is, with regard to the mechanics of the banners that you
12 ordered. You said that Mrs. Willis is going to give us the
13 site for each social media that she wants us to put on those
14 banners.

15 MS. WILLIS: Yes.

16 MS. MATZ: We request that there be a time frame for
17 her doing that, and then we be allowed, you know, 48 or 72
18 hours just to effectuate those changes.

19 MS. WILLIS: I'll give them to you now.

20 MS. MATZ: Just because it's loud, is there a chance
21 that they can just be e-mailed after the hearing so that there
22 is no confusion as to what is being asked?

23 MS. WILLIS: Sure.

24 THE COURT: She'll e-mail them right away, and they
25 need to be effectuated by Monday.

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1 MS. MATZ: Thank you, your Honor.

2 THE COURT: And in terms of a hearing, what I'd like
3 to do -- well, I hope that you'll be able to get to "yes" with
4 the magistrate judge, but I can tell you, this hearing won't
5 take as long as the last one, but I have a trial which is going
6 to start either April 2nd or 4th. And then I have a two-week
7 PI hearing in another case that's starting April 12th.

8 So I could squeeze you in either between the two or at
9 the end of April, or even at the end of March, if need be.

10 MS. MATZ: We would like to do between the two. We
11 think that going to Magistrate Judge Smith is a good idea, but
12 we don't want it to be the end of April until this is decided.

13 THE COURT: And there is a show April 27th. So why
14 don't we say, if this works for everybody, that the PI hearing
15 will be April 9th. It seems to me the issues are much narrower
16 than last time. It's essentially going to be what's the
17 likelihood of confusion; and this issue with respect to what's
18 actually covered by the trademark, which is whether the patter
19 and the dance routines are covered or not. So I'm hoping a day
20 will be enough.

21 MS. MATZ: Can I ask one other question.

22 THE COURT: Yes.

23 MS. MATZ: And that is, will we be submitting briefs
24 on the issue ahead of the hearing to cover the legal issues?

25 THE COURT: Yes. I was going to get to that.

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1 And actually, April 9th -- I want to switch it to
2 April 10th, if you don't mind, because April 9th -- whether I'm
3 starting the previous trial the 2nd or the 4th is up in the
4 air, and if we start it the 4th, we probably won't finish until
5 the 9th, so let's make this the 10th.

6 Yes, I'm going to need briefing. I'm going to need
7 briefing on all sorts of things. I'm going to need briefing on
8 "former" and "formerly", because I haven't had that yet. I'm
9 going to need briefing on likelihood of confusion and whether
10 the "formerly" language or the "former" language dissipates any
11 likelihood of confusion, and I'm going to need briefing on
12 whether the patter and the dance routines, stock stuff is
13 covered by the trademark or not, and whatever other issues the
14 parties think are relevant.

15 I'll speak to Judge Smith. Hopefully, she'll be able
16 to get you in quickly.

17 But why don't we say, whatever issues anybody wants to
18 brief, I'll want the briefs on April 2nd. Actually, we can
19 make it April 3rd.

20 MS. MATZ: And your Honor, --

21 THE COURT: The burden at this hearing is going to be
22 yours, Ms. Willis, so you need to tell me what the law is and
23 all of that.

24 And the parties should exchange witness names, why
25 don't we say, on the same date.

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1 MS. MATZ: Could we have the witness names be slightly
2 after the briefings, only because what issues (inaudible)
3 parties brief other issues that could impact the witness list?

4 THE COURT: All right. The 5th, April 5th, exchange
5 the witness names.

6 MS. MATZ: And your Honor, are you going to be
7 requiring a bond for the TRO to go into effect? And can we
8 discuss the amount?

9 THE COURT: Let me hear you. Why shouldn't I,
10 Ms. Willis? What if it turns out that you're wrong and they're
11 right, and they're harmed by not having access to these sites?

12 MS. WILLIS: Well, your Honor, it would all come down
13 to whether or not Can't Stop had a right to terminate their
14 verbal agreement, and I think the case law is clear that they
15 can with proper notice. And if the notice is proper -- was not
16 proper, the remedy is breach of contract, so there's just no
17 likelihood that I can see.

18 And I think, your Honor, in your ruling, you surmised
19 that they would have the right to -- they would have to show
20 that Can't Stop just could not terminate them, and that's just
21 unlikely. So I don't see why a bond would be necessary,
22 particularly since we're simply limiting their access to this
23 social media. And they already are using the Kings of Disco,
24 your Honor. So, there it is.

25 MS. MATZ: Your Honor, if I can be heard on this

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1 issue. I think a bond is required. Here she's essentially
2 asking to not allow us to use URLs, even if we change the names
3 so that we're no longer going to have active use of these pages
4 that our clients are using for some time that relates directly
5 to our client's ability to book and things like that. And in
6 the event she's wrong, our client could suffer for monetary
7 damages.

8 And the whole point of a bond is to ensure that the
9 party who is about to be enjoined has some security on that
10 issue. And I don't think it is fair to issue a TRO against our
11 clients without some requirement of a bond.

12 THE COURT: Look, I have heard a lot of evidence in
13 this case. And I think it's not likely that the ultimate
14 outcome is going to be that the defendants are entitled to use
15 Official Village People or Village People to advertise or
16 generate interest in their act, but there I guess remains a
17 remote possibility of that happening.

18 The rule says that the Court can issue a preliminary
19 injunction or TRO only if the movant gives security in an
20 amount that the Court considers proper to pay the costs and
21 damages sustained by any party found to have been wrongfully
22 enjoined or restrained.

23 Given the limited nature of this TRO, it's hard to
24 imagine that there would be a very substantial damage, even if
25 somehow later on, this was found to be an improper TRO, so I'll

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1 require a bond in the amount of \$1,500, which seems to me to be
2 sufficient to cover whatever the damages may be if there are
3 any.

4 MS. WILLIS: Thank you, your Honor.

5 MR. LEVY: Can I just ask for clarification also.
6 After -- I was trying to take notes on what this TRO is going
7 to be. If you take a step back, using my ethnic background,
8 this is, like, a big megillah over nothing, because we had the
9 big preliminary injunction hearing. It was found my client
10 retains his trademark rights.

11 If the issue here is -- okay, the patter and the
12 dance, I am sure that reasonable people can figure this thing
13 out. I don't see this as the case of the century for that
14 issue.

15 THE COURT: The issue that's different now is -- we're
16 not going to revisit that your client retains its trademark
17 rights. The question at this hearing is going to be, if
18 there's a new group that comes along that's not saying it's
19 Village People, but it's saying Kings of Disco Former Members
20 of Village People, is that going to be confusing if they use
21 the costumes --

22 MR. LEVY: But your Honor, if --

23 THE COURT: -- and characters?

24 MR. LEVY: It's not that I -- I'd love to come back
25 here for another hearing. I have no other place to go. It's

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1 very enjoyable. And we'll have the hearing. But again, if you
2 were taking this to the nth degree, you would do what you do
3 in a normal trademark infringement case. I'd have to do
4 surveys, get people to testify and say, gee, I saw the group
5 perform, I was confused, I thought -- that's what you'd want to
6 show, but the group's not performing right now, so it's going
7 to be hard to get eyewitnesses.

8 So what you're down to is a legal issue of "formerly"
9 which is a nominative fair use issue. That's the one legal
10 issue that I see here.

11 THE COURT: Well, the argument that the defendants are
12 making, and I'm not saying I'm buying it, but the argument is,
13 sure, if we were going around saying we were Village People and
14 performing in these characters and costumes, people would be
15 confused because there would be two groups doing the same thing
16 and they wouldn't know who is the licensee of Jacques and Henri
17 who were the visionaries who created the Village People and who
18 have, more or less over the years, been policing the quality.

19 However, once you're no longer going around performing
20 as Village People and you're performing as Kings of Disco, the
21 argument goes, nobody's going to think you're Village People
22 and, therefore, there's no likelihood of confusion.

23 And I do think the use of the URL is confusing, and
24 that's what I'm enjoining. But it's a separate question
25 whether a consumer, who went to see Kings of Disco, Former

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1 Members of Village People, and then saw the whole Village
2 People shtick would or would not be confused as to who is the
3 Village People that the visionaries have created, the Village
4 People have authorized to use the trademark and whose quality
5 is being policed by those people.

6 So I'm not saying that I think the argument is right,
7 but I think we should understand the argument, which is,
8 whatever confusion may have existed from both groups performing
9 under the name Village People is now gone because they're
10 performing under the name Kings of Disco, so nobody is going to
11 think the Village People.

12 MR. LEVY: It just seems, though -- I understand that,
13 but it just seems to me that this has been ratcheted up to
14 where what Sixxvus is doing is -- instead of trying to help us
15 resolve this after -- we had our day in court. And when
16 they're ratcheting things up, they're going to make it harder,
17 they're going to make it -- the extent of damages is going to
18 be greater.

19 THE COURT: I couldn't agree more. That's why I gave
20 Ms. Matz a speech about why her guys are going to have to come
21 up with a *modus vivendi*, a new way of living, with the sad fact
22 that they can't perform as Village People anymore. And they're
23 talented guys. And they're going to have to come up with
24 something that's not infringing.

25 MS. MATZ: Your Honor --

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1 THE COURT: And I hope that the -- look, I know since
2 at least August, they have contemplated the possibility that
3 this ax might fall, and it fell a month ago, and they need to
4 get real.

5 And what you all need to do, even before Judge Smith
6 calls you in, is start talking about what is life going to be
7 like for the Sixuvus going forward and come to some agreement.

8 I don't think Ms. Willis or Mr. Levy is being
9 unreasonable here. And it seems to be a portion of the show is
10 a tribute. If they want to make themselves out to be a tribute
11 band, that's a whole different -- well, let me put it this way:
12 that's a whole area of the law about which I know nothing.

13 I don't know. Can you just say, okay, we won't be --
14 the Village People will be the Village People Tribute Band and
15 do the exact same thing? I don't know how that works, but so
16 far, they're not advertising themselves as a tribute band.

17 I would imagine the Sixuvus members want to perform.
18 They don't want to pay lawyers and have hearings. So, I hope
19 that they're more motivated than they were up 'til now to
20 resolve this amicably so that everybody can get back to work.

21 And I'm sure Ms. Matz will share with them her opinion
22 as to what the writing on the wall looks like.

23 Hopefully, I will not see you, but if I do see you, it
24 will be on April 10. And in the meantime, we will get out an
25 order, and Ms. Matz and her clients will get to work on

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1 complying with it.

2 MR. LEVY: Your chambers will be issuing the order as
3 opposed to me trying to circulate something.

4 THE COURT: I think it's a very narrow order. It's
5 going to just say -- you know what I'll do. We'll write
6 something, and it really only is going to have four things in
7 it. It's going to have the two banners, the obligation to
8 disable or freeze, and the name, "Kings of Disco, Former
9 Members of," so I think I can handle that.

10 MR. LEVY: Thank you.

11 THE COURT: If, when it comes out, you think there's
12 something horrible in it that we didn't talk about, you can let
13 me know, but that's all that's going to be in there.

14 MS. MATZ: Your Honor, I have --

15 THE COURT: And Ms. Willis, you can have until Monday
16 for the bond.

17 MS. WILLIS: Thank you, your Honor.

18 MS. MATZ: Two housekeeping items. One is, if the
19 order could just also reference my question about if it is
20 possible to transfer, because we don't want to be in technical
21 violation if we are able to transfer the sites.

22 THE COURT: Tell me what language you'd would want. I
23 can say something about transfer of the sites to --

24 MS. MATZ: Something along the lines of it would
25 not -- after the freeze or disable language, something along

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1 the lines of it wouldn't be a violation if they are able to
2 transfer to a new URL; that they're able to change it,
3 essentially.

4 THE COURT: So why don't I say transfer of the content
5 of the Facebook page and Twitter account to different URLs
6 would constitute compliance with this paragraph or something
7 like that?

8 MS. MATZ: Thank you, your Honor.

9 MS. WILLIS: As long as Official Village People is not
10 attached to it.

11 THE COURT: Not employing the term Village People.

12 MS. WILLIS: Yes.

13 MS. MATZ: Your Honor, it might employ it in terms of
14 if it's Kings of Disco, Formerly Members of Village People, but
15 not employing only Village People or Official Village People,
16 we understand that.

17 THE COURT: Not employing the term Village People
18 except as part of the name Kings of Disco, Formerly Members of
19 Village People, but I don't think your URL is going to have all
20 of that in it.

21 MS. MATZ: I just don't know; that's why I wanted the
22 clarification.

23 THE COURT: All right.

24 MS. MATZ: And my last question is, we were going to
25 make a letter application regarding an extension of time to

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1 answer Mrs. Willis' complaint. I can put in that letter today
2 or I was planning on just raising it if we were talking about
3 scheduling, unless your Honor would prefer a letter
4 application.

5 THE COURT: We do have a conference, I think, at the
6 end of the month, at which we were going to have to discuss a
7 bunch of things, including there hasn't been opposition to the
8 motion to intervene yet.

9 MS. MATZ: Yes. That's one of the things we were
10 going to bring up.

11 THE COURT: There hasn't been an answer. There's been
12 a lot of that -- what I'd like you to do is talk amongst
13 yourselves and see if you can come up with an agreement on when
14 all those things are going to happen if the settlement talks
15 fail.

16 And if you can get to "yes," then we don't have to
17 have the conference at the end of the month. If you can't,
18 then we'll have a conference at the end of the month and set
19 dates for all of the that.

20 For the moment, I've been treating Ms. Willis as an
21 intervenor. I'm going to continue to do that. If I remember,
22 the defendants were not contesting her right to intervene so
23 much as contesting whether she had the right to intervene as of
24 right or as a matter of discretion. They weren't -- I should
25 put it this way: they weren't opposing her intervention; they

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1 just wanted to think on whether it was as of right or not,
2 because that would affect some things down the road.

3 MS. MATZ: Your Honor, sorry. I didn't realize you
4 weren't finished. I apologize. It's difficult over the phone
5 I'm sorry.

6 THE COURT: Yes, it really is. Go ahead.

7 MS. MATZ: I was going to say, at the conference where
8 that happened, we may be opposing her right to intervene at
9 all. Your Honor had said you were inclined to let her
10 intervene one way or the other. Obviously, we wanted to brief
11 the issue.

12 Our answer is currently due the day before that
13 conference. And I did ask Mrs. Willis for an extension and she
14 already refused consent. That was why I was bringing it up
15 now, because I believe that the intervenor motion should be
16 decided before an answer is required, that's all, or a response
17 or a motion to dismiss or something like that, because the
18 question of the intervenor, whether she's allowed to at all,
19 and if so, whether it's as of right or permissively, could
20 affect what claims she is even allowed to assert.

21 So we just wanted an extension of time that the answer
22 be due after the intervenor motion. And I agree, we should get
23 together and agree on a briefing schedule for that motion, but
24 technically, the answer is due the day before that conference.
25 And I did already reach out to Mrs. Willis and she said no, so

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1 that was why we were going to make an application.

2 MS. WILLIS: I would caution, I guess, the defendants
3 that -- not to spend so much time and resources on that issue
4 of intervention, because as you know, your Honor, I've crafted
5 now claims related to things that have occurred since the
6 denial of the preliminary injunction, which means that I can
7 bring those claims independent. Even if I wasn't intervening,
8 I could go in and file.

9 So why are we spending so much time on that?

10 THE COURT: That makes a certain amount of sense. I
11 mean, even if Ms. Willis isn't entitled to intervene in this
12 case, she could just go downstairs and start a new lawsuit, so
13 it's probably in everybody's interest to just deal with it all
14 here.

15 However, I do agree that it makes a certain amount of
16 sense if the outcome of the motion to intervene is going to
17 determine -- may drive what claims the intervenor's allowed to
18 bring, it makes sense to postpone the answer until after that's
19 decided. So knowing that, and that, therefore, I probably will
20 extend defendant's time to answer the complaint in the
21 intervenor's complaint, why don't you guys talk offline about a
22 motion schedule -- a schedule for the opposition and reply on
23 the motion to intervene, and then the answer would be due 14
24 days after a decision, or something like that.

25 MS. MATZ: And that's essentially what we would be

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1 looking for. The answer or other response to the motion or
2 dismiss, whatever, be due a couple of weeks after the
3 intervention motion is decided.

4 THE COURT: Right. But Ms. Willis is making a
5 practical suggestion, which I would give serious consideration
6 to, which is, really, what is the point? She's just going to
7 sue you in a separate lawsuit anyway. So, maybe your clients
8 have a pot of gold that they like spending on legal fees, but
9 if they don't, maybe we should just try to work this all out in
10 one proceeding.

11 MS. WILLIS: Your Honor just made my point. Thank
12 you.

13 MR. LEVY: And case management plan --

14 MS. MATZ: I don't mean to belabor this. I hear what
15 you're saying, but I think part of our point is, she doesn't
16 have a right to sue under her license. So I think there are
17 very serious questions about what's the status and what claims
18 she can assert as opposed to Can't Stop.

19 And I hear what you're saying, but and at the same
20 time, we do hope we work it out. We were very close at the
21 preliminary injunction hearing, and I'm not going to get into
22 what happened, but it was very unfortunate that it didn't
23 settle then, and hopefully the parties can work something out
24 this time.

25 THE COURT: Good.

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1 MR. LEVY: When doing the case management plan, I was
2 filling it out, I was going to send it to Ms. Willis and to
3 Ms. Matz, but if she's not officially in the case --

4 THE COURT: I think we'll postpone discovery until
5 after we've figured out who's in and who's out.

6 MR. LEVY: So, do I submit a case management plan with
7 no discovery cutoff date?

8 THE COURT: I don't think we need a case management
9 plan at all right now.

10 MR. LEVY: Oh. It's due March 28.

11 THE COURT: Well, I'm waiving it.

12 MR. LEVY: You're waiving. Okay.

13 MS. MATZ: So do we still need to -- so we'll still
14 discuss the briefing schedule and send a letter to the Court on
15 that and the response to the complaint?

16 THE COURT: Yes. And if you can't agree -- or if you
17 can agree, and if there are no other issues to discuss, then
18 you can send me a letter saying here's what we agreed to,
19 there's no other issues to discuss, and then we don't need to
20 have the conference on the 28th, or whatever date it was.

21 MR. LEVY: The 28th.

22 THE COURT: But if you can't agree, or if there are
23 issues to discuss, we'll have the conference, but I'd love to
24 see you working more toward resolving it.

25 I don't need to know why the settlement that seemed so

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Conference

1 close to being in hand cratered. Obviously, the defendants are
2 in a less optimistic position now, but I won't go any further
3 into it.

4 I imagine, as I said, the defendants have better
5 things to do than litigate. And I imagine Ms. Willis, who is
6 not paying for counsel, still has things she'd rather do with
7 her time than come here and litigate this matter, and I'm sure
8 Mr. Belolo feels the same way.

9 So it seems like this is yet another opportunity for a
10 peace treaty, and I hope that you can get there; otherwise,
11 I'll see you on is it March 28.

12 MR. LEVY: Yes.

13 THE COURT: March 28.

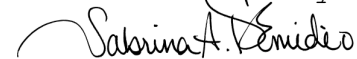
14 MS. WILLIS: Thank you.

15 MS. MATZ: Thank you, your Honor.

16 THE COURT: Thank you.

17 - - -

18 Certified to be a true and correct
19 transcript of the stenographic record
20 to the best of my ability.

21 

22 U.S. District Court
23 Official Court Reporter
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